

LEONARD C. FINK

MARCH 19, 1958.—Committed to the Committee of the Whole House and ordered to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2132]

The Committee on the Judiciary, to whom was referred the bill (S. 2132) for the relief of Leonard C. Fink, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The purpose of the proposed legislation is to authorize the Secretary of the Treasury to pay to Leonard C. Fink, of Kenmare, N. Dak., the sum of \$125, representing reimbursement of a duplicate payment made by Mr. Fink on account of an overpayment of class E family allotments.

STATEMENT

The Department of the Army is in favor of this bill.

The claimant, while serving in the United States Army, authorized a voluntary allotment of \$25 a month to be paid to his father effective January 1, 1944. However, on December 31, 1943, he discontinued the allotment effective December 31, 1943 (prior to the original effective date of the allotment). Through error, the responsible officials of the Army, while they did not deduct an allotment from Fink's salary, nevertheless paid the \$25 a month to his father for 5 months before discovering the error. In September 1944, Mr. Fink paid \$125 to the War Department to cover the indebtedness created by the erroneous receipt of payments by his father, and in December 1944 authorized a new allotment to his father of \$30 a month. Thereafter, his father returned 5 of these later allotment checks in the amount of \$30 each, to be applied against the prior indebtedness of which \$25 was subsequently refunded to the father by the United States. This left the United States owing the soldier \$125, and it is the purpose of this bill to cause that payment to be made to him since the statute of limitations bars payment by the General Accounting Office.

Attached hereto for the information of the Senate is a letter dated December 20, 1956, from the Department of the Army.

DEPARTMENT OF THE ARMY,
Washington, D. C., December 20, 1957.

Hon. JAMES O. EASTLAND,
*Chairman, Committee on the Judiciary,
United States Senate.*

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of the Army for the views of the Department of the Army with respect to S. 2132, 84th Congress, a bill for the relief of Leonard C. Fink.

This bill provides as follows:

"That notwithstanding the provisions of the Act entitled 'An Act providing for the barring of claims against the United States', approved October 9, 1940 (54 Stat. 1061), the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Leonard C. Fink, of Kenmare, N. Dak., the sum of \$125, representing the amount the United States Army failed to withhold from his Army pay for class E family allotment payments made to his parents from January 1944 through May 1944, which amount the said Leonard C. Fink paid on September 29, 1944, after such amount had previously been collected from his parents by the Department of the Army."

The Department of the Army favors the above-mentioned bill.

Leonard Clyde Fink was born in Tolley, N. Dak., on June 17, 1918. He was inducted into the United States Army, in the grade of private, on March 29, 1941, and assigned service No. 37082120. On December 3, 1943, he authorized a class E allotment (a voluntary allotment of a portion of military pay) of \$25 per month to be paid to his father, Clyde M. Fink, effective January 1, 1944. However, on December 21, 1943, he discontinued this allotment, effective December 31, 1943 (prior to the original effective date of the allotment). Through administrative error, the allotment of \$25 was paid to Clyde M. Fink for 5 months (January-May 1944), with no deductions being made for the amount of the allotment from Leonard C. Fink's pay. These payments to Clyde M. Fink were not authorized by Leonard C. Fink.

On September 29, 1944, Leonard C. Fink paid \$125 to the War Department (now Department of the Army) to liquidate the indebtedness of Clyde M. Fink to the United States because of erroneous receipt of payments. Effective December 1, 1944, Leonard C. Fink authorized a new class E allotment of \$30 per month payable to his father. Clyde M. Fink returned 5 of these allotment checks in the amount of \$30 each (issued for the months July-November 1945) to be applied against the indebtedness which had already been paid by his son. The total amount of the checks returned by Clyde M. Fink was \$150, and therefore \$25 was refunded to Clyde M. Fink by the United States. This allotment continued in effect until terminated by Leonard C. Fink's separation from the Army on December 7, 1945.

The net effect of the above events was that \$250 was refunded to the United States by Leonard C. Fink and Clyde M. Fink to liquidate an indebtedness of only \$125. This Department has been advised by the General Accounting Office that Leonard C. Fink submitted a claim in the amount of \$125, which claim was disapproved and returned to him by a letter dated April 23, 1957, because the claim was barred by

the applicable 10-year statute of limitations (the act of October 9, 1940 (54 Stat. 1061)).

It has been stated that, "The purpose of the statute of limitations is to require any necessary litigation to be brought within such time as the particular facts and circumstances may be proved with the utmost certainty and before adequate proof has become stale or entirely lost" (34 Am. Jur., sec. 9 (Cum. Supp. 1956)). This policy does not appear to be violated in this case, as available records fully document the nature of the transaction in question. Leonard C. Fink is not considered to have been at fault in any manner, as he had discontinued the first allotment prior to its effective date, and he received no benefits from the payments which were erroneously made.

For the foregoing reasons, the Department of the Army recommends that this bill be favorably considered.

The cost of this bill, if enacted, will be \$125.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

WILBER M. BRUCKER,
Secretary of the Army.

Report addressed to Senator James O. Eastland, from the Department of the Army, dated December 20, 1957, recommends favorable consideration be given the bill. Therefore, your committee concurs in that recommendation and recommend favorable action be given the bill.

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